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UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

IN THE MATTER OF EXPANDING
INTERNATIONAL AIR SERVICE
OPPORTUNITIES TO MORE U.S. CITIES

DOCKET 46534

COMMENTS OF
THE AIR LINE PILOTS ASSOCIATION, INTERNATIONAL

November 13, 1989

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In Order 89-10-19 the Department has proposed to explore the possibility of granting foreign carriers extra-bilateral authority to serve U.S. cities if certain conditions are met. ALPA opposes the Department's proposal because it would almost certainly result in a significant diversion of traffic - and thus revenue and jobs - from U.S. carriers with no offsetting benefit to those carriers. ALPA believes that before any program is designed to grant extra-bilateral authority to foreign carriers, the Department must ascertain through careful analysis, that the potential harm to U.S. carriers of such a program does not outweigh any benefit to the traveling public. Only if it is demonstrated persuasively that the program would provide a clear net benefit to statutorily specified U.S. interests should the Department consider the circumstances under which international service authority might be granted on a case by case basis. In

this regard, ALPA submits that the Department's current proposal would have to be modified substantially before it could be implemented in a meaningful manner. Finally, ALPA believes that if the Department decides to implement an extra-bilateral route authority program the program should be for a limited duration so that its results may be evaluated and that any renewal should be based on the results of that evaluation.

DISCUSSION

- A. Before Establishing a Program to Grant Extra-Bilateral International Service Authority, DOT Must Assess Whether the Harm to U.S. Carriers of Granting Such Rights to Foreign Carriers Outweighs the Benefits to the "Traveling" Public.

DOT's proposal to grant extra-bilateral service authority to foreign carriers under certain conditions is based on the assertion by several state and local officials and business leaders that international air service to their communities "can mean expanded tourism, business, foreign investment, and jobs" The basis for the proposal appears to offend the conditions established in the Federal Aviation Act under which service opportunities may be granted to foreign carriers.

Section 1102(b) (8) of the Act establishes, as one of the factors to be considered by the Department in formulating international aviation policy, the opportunity for foreign carriers "to increase their access to United States points if

exchanged for benefits of similar magnitude for United States carriers or the traveling public" (emphasis added). This provision plainly expresses Congress' intent that the Department only grant international service opportunities to foreign carriers in exchange for comparable benefits to two specified groups -- U.S. carriers and the "traveling" public. The Department's proposal, however, is devoid of references to any evidence that the traveling public will receive measurable benefits from the proposal. (The proposal also sites no support for the proposition that the extra-bilateral service that would be granted will stimulate foreign investment and create jobs in the communities that receive the service).

A clear demonstration that the proposal will have such benefits is required, however. The Department's proposal, if implemented, would result in significant traffic diversion from the U.S. carriers that provide feed to gateway cities from U.S. communities that might be served under the proposal or that provide international service that depends on that feed. This lost traffic will not be offset by new traffic generated by the proposed program or, for that matter, by anything else. U.S. carriers, particularly those that rely heavily on international traffic for their revenues, may find that the diverted traffic spells the difference between survival and financial collapse.

It is reasonable to assume that Congress intended that

if a grant of service authority to a foreign carrier might harm either U.S. carriers or the traveling public that a determination would be made that the grant would provide at least a net benefit to the specified U.S. interests. Thus, the Department, before implementing any program of granting extra-bilateral authority to foreign carriers, should develop an analytical model capable of determining whether the economic benefits to the traveling public of the air service in question will outweigh the harm to U.S. carriers and their employees. The model should be able to assess the advantage, if any, of one-stop single-plane service by a foreign carrier as opposed to one-stop connecting service by a domestic airline and should take into account the existence of charter service in the market in question. Interested parties should be given an opportunity to comment on the soundness of both the design and implementation of the model before the Department determines that international service authority should be granted in an extra-bilateral manner.

B. In the Event DOT Decides to Grant International Service Authority on an Extra-Bilateral Basis, the Department's Proposed Program Should be Modified Substantially.

Should DOT, after carefully assessing the results of the analysis discussed above, decide to establish a program providing for grants of international service authority on an extra-bilateral basis, ALPA submits that the program proposed by the Department should be modified substantially.

First, in order to ensure that the program is actually achieving its stated objectives without unduly harming U.S. carriers, applying carriers and their supporters should be required to demonstrate convincingly, on a case by case basis, that the economic benefits flowing from the proposed service will outweigh any harm to U.S. carriers and their employees. This demonstration is particularly appropriate when the applicant proposes to operate one-stop single-plane service over a route where a U.S. carrier either operates or intends to operate one-stop connecting service, as the real advantage of the applicant's service in such a case may reasonably be questioned. The Department should expressly state that a demonstration that granting service authority to a foreign carrier over a particular route would have severe economic consequences for a U.S. carrier or that the service benefits of the foreign carrier's service do not clearly outweigh the harm to U.S. carriers and other U.S. interests would be "overriding public interest reasons for denying the requested authority."

Second, ALPA agrees with the Department that any program should not permit an extra-bilateral grant of service authority if there is a basis to achieve a traditional aviation trade to obtain benefits for U.S. airlines - in other words, a "procompetitive" agreement must be in place between the U.S. and the home country in question and U.S. airlines must have obtained

through traditional negotiations all their objectives before any extra-bilateral authority can be awarded. ALPA believes, however, that any program should spell out in some detail the minimum contents of "procompetitive" agreement. The essential elements of such an agreement would include the absence of designation, capacity, pricing, doing business or charter restrictions; unlimited change of gauge and beyond and behind rights; and security articles that ensure the home country is party to security programs satisfactory to U.S. carriers.

Third, any program granting extra-bilateral rights should specifically require that passengers originating in or destined for the home country of the participating foreign carrier begin or end their air transportation in that country. The third condition in the Department's proposal, which states that an applicant's proposal may "not involve service to and from third countries" is presumably intended to preclude beyond service that is linked to extra-bilateral service. However, this language could be construed to permit foreign carriers to use connecting flights to carry passengers from U.S. communities to destinations beyond the homeland hub and vice-versa. If so construed the proposal would create an unfair advantage for foreign carriers. This is so because even if U.S. carriers have the right to create a hub in the foreign country in question, they will almost certainly not be able to compete on equal

footing with the foreign country's carriers for connecting passengers as they will be confined to operating over a limited number of hard-to-negotiate fifth freedom routes behind the hub, while the foreign carrier will almost certainly be able to offer service to a wide array of destinations over routinely negotiated third and fourth freedom routes. By way of example, under the Department's proposed program KLM would be able to carry passengers from Kansas City to Amsterdam, and then on to Milan on a connecting flight. U.S. carriers would not be able to provide the same service, even if permitted to do so under a procompetitive agreement with the Netherlands, because Italy does not permit the carriage of fifth freedom traffic over the route. Thus, even highly competitive U.S. carriers will find themselves at a disadvantage on a route by route basis with foreign carriers that are able to provide almost unrestricted connecting service beyond the home country. (This disadvantage will increase if, as is likely in the near future, the European Community eliminates service restrictions on carriers of member nations). Moreover, because the foreign carrier operations in question do involve a change in aircraft, traffic may be diverted from U.S. carriers without achieving the sought after benefit of single-plane service. Accordingly, the Department should make clear that service under the proposal may only be provided to passengers originating or terminating in the foreign carrier's home country.

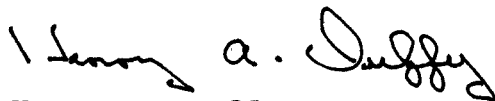
Fourth, foreign carriers that are owned or subsidized by foreign governments should be excluded from the proposed program. A carrier that is owned or subsidized by a government may not be subject to the same sort of stockholder scrutiny as is a privately-owned airline. A government might be more patient than a private stockholder while an airline enters and attempts to develop currently unprofitable routes. Also, a government-owned or subsidized carrier may have capital provided it on terms that are unavailable to a privately-owned carrier. Likewise, a government-owned carrier may be protected from the types of buyouts or restructurings that privately-owned carriers are subject to if shareholders perceive that the airline's assets are not being used to maximize the value of the airline. In short, government-owned or subsidized airlines are not subject to the same market disciplines as privately-owned carriers and thus may be willing to serve routes that privately-owned carrier's can not justify serving. However, absent an explicit restriction, government-owned carriers could receive service rights under the Department's proposal and divert traffic from privately-owned U.S. carriers that have to make route entry calculations with an eye to a different bottom line.

Fifth, any program granting international service authority on an extra-bilateral basis should be implemented on a trial basis for a limited period of time so that the results of

the program may be assessed to determine whether renewal is warranted. ALPA submits that given the novelty of the program a one to one and a half year duration would be appropriate. At the latest, the program should be reviewed in 1992 when the propriety of renewal can be considered in light of what may be relevant developments in the European Community's approach to international aviation rights.

Finally, if some version of the proposed program is given effect, the Department should require applicants for extra-bilateral service authority to serve copies of their applications on ALPA. ALPA represents over 41,000 pilots at 47 carriers. Because any grant of service authority under the proposed program would almost certainly affect at least some of the Association's members fairness dictates that ALPA should be provided an opportunity to comment on applications for that authority.

Respectfully submitted,



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